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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-122-857)

### **Certain Softwood Lumber Products from Canada: Initiation of Less-Than-Fair-Value Investigation**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen at (202) 482-2769 or Robert Galantucci at (202) 482-2923, AD/CVD Operations, Enforcement and Compliance, U.S.

Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On November 25, 2016, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of certain softwood lumber products (softwood lumber) from Canada, filed in proper form, on behalf of the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (COALITION) (hereinafter, Petitioner).<sup>1</sup>

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<sup>1</sup> See Letter from Petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada," November 25, 2016 (the Petition), at Volume II. The COALITION is an ad hoc association whose members are: Collum's Lumber Products, L.L.C., Hankins, Inc., Potlatch Corporation, Rex Lumber Company, Seneca Sawmill Company, Sierra Pacific Industries, Stimson Lumber Company, Swanson Group, Weyerhaeuser Company, Carpenters Industrial Council, Giustina Land and Timber Company, Sullivan Forestry Consultants, Inc., and the U.S. Lumber Coalition, Inc. *Id.*, Volume I at 2.

On November 30, 2016, the Department requested additional information and clarification of certain areas of the Petition.<sup>2</sup> Petitioner filed responses to these requests on December 1, 2016.<sup>3</sup> On December 7, 2016, in consultations the Department held with respect to the companion CVD case on imports of softwood lumber from Canada, the Government of Canada (GOC) provided comments on, and requested the Department poll the industry to determine, industry support.<sup>4</sup> On December 8, 2016, Petitioner provided a response to the GOC comments on industry support.<sup>5</sup>

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that imports of softwood lumber from Canada are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, Petitioner states that the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry

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<sup>2</sup> See Letter from the Department to Petitioner concerning general issues entitled “Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Supplemental Questions,” dated November 30, 2016 (General Issues Supplemental Questionnaire); *see also* Letter from the Department to Petitioner concerning antidumping matters entitled “Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Supplemental Questions,” dated November 30, 2016 (Antidumping Supplemental Questionnaire).

<sup>3</sup> See Letter from Petitioner to the Department entitled “Supplement to the Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Response to the Department’s Supplemental Questions,” dated December 1, 2016 (Petition Supplement).

<sup>4</sup> See Memorandum from Robert Galantucci to the file entitled “Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Consultation Documents,” dated December 13, 2016 (Consultation Document Memorandum), at Attachment 1 (Letter from the Government of Canada to the Department entitled, “Certain Softwood Lumber from Canada: Submission of Consultations Paper,” dated December 7, 2016).

<sup>5</sup> See Consultation Document Memorandum, at Attachment 2 (Letter from Petitioner to the Department entitled, “Comments on Government of Canada’s Consultations Paper,” dated December 8, 2016); *see also* Consultation Document Memorandum, at Attachment 3 (Memorandum to the File Re: Consultations with Officials from the Government of Canada, dated December 7, 2016, which references the GOC comments.).

because Petitioner is an interested party as defined in section 771(9)(F) of the Act. As discussed in the “Determination of Industry Support for the Petition” section, below, the Department also finds that Petitioner demonstrated sufficient industry support with respect to initiation of the requested AD investigation.<sup>6</sup>

#### Period of Investigation

Because the Petition was filed on November 25, 2016, the period of investigation (POI) is, pursuant to 19 CFR 351.204(b)(1), October 1, 2015, through September 30, 2016.

#### Scope of the Investigation

The product covered by this investigation is certain softwood lumber products from Canada. For a full description of the scope of this investigation, *see* the Appendix to of this notice.

#### Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.<sup>7</sup> As a result of these exchanges, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The class or kind of merchandise covered by this initiation, as described in the Appendix to this notice, reflects that clarification.

As discussed in the preamble to the Department’s regulations,<sup>8</sup> we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope). The Department will consider all comments received from parties and, if necessary, will consult with

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<sup>6</sup> See the “Determination of Industry Support for the Petition” section below.

<sup>7</sup> See General Issues Supplemental Questionnaire and Petition Supplement.

<sup>8</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 2007).

parties prior to the issuance of the preliminary determinations in this investigation and the companion countervailing duty investigation concurrently being initiated. If scope comments include factual information,<sup>9</sup> all such factual information should be limited to public information. The Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Standard Time (EST) on January 4, 2017, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information (and also should be limited to public information), must be filed by 5:00 p.m. EST on Tuesday, January 17, 2017, which is the first business day ten calendar days after the initial comments deadline.<sup>10</sup>

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments and information must be filed on the records of the AD investigation and the concurrent CVD investigation.

#### Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>11</sup> An electronically filed document must be received successfully in its entirety by

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<sup>9</sup> See 19 CFR 351.102(b)(21).

<sup>10</sup> See 19 CFR 351.303(b)(1) ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.")

<sup>11</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

#### Comments on Product Characteristics for AD Questionnaires

The Department is giving interested parties an opportunity to provide comments on the appropriate physical characteristics of softwood lumber to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics and 2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe softwood lumber, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 P.M. EST on January 18, 2017. Any rebuttal comments, which may include factual information (and should be limited to public information), must be filed by 5:00 p.m. EST on January 30, 2017, which is the first business day 10 calendar days after the initial comments deadline.<sup>12</sup> All comments and submissions to the Department must be filed electronically using ACCESS, as explained above.

#### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining

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<sup>12</sup> See 19 CFR 351.303(b)(1) (“For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.”)

whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,<sup>13</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>14</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of this investigation. Based on our analysis of the information submitted on the record, we have determined that softwood lumber constitutes a single domestic like product and we analyzed industry support in terms of that domestic like product.<sup>15</sup>

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like

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<sup>13</sup> See section 771(10) of the Act.

<sup>14</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>15</sup> For a discussion of the domestic like product analysis in this investigation, see Antidumping Duty Investigation Initiation Checklist: Certain Softwood Lumber Products from Canada (Canada AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Softwood Lumber Products (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit (CRU), Room B8024 of the main Department of Commerce building.

product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, Petitioner provided actual 2015 production data of the domestic like product for all U.S. softwood lumber producers that support the Petition.<sup>16</sup> Petitioner also estimated the 2015 softwood lumber production of those U.S. softwood lumber producers/sawmills whose workers are represented by the Carpenters Industrial Council, a recognized union and a member of the COALITION.<sup>17</sup> Petitioner estimated total 2015 production of the domestic like product for the entire domestic industry based on production data published by *Lumber Track*, adjusted to account for any flooring and siding produced outside sawmills that may have not been included in the published production data.<sup>18</sup> Petitioner compared the total production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.<sup>19</sup> We relied upon data Petitioner provided for purposes of measuring industry support.<sup>20</sup>

On December 7, 2016, we received comments on industry support from the GOC.<sup>21</sup> Petitioner responded to the GOC’s Comments on December 8, 2016.<sup>22</sup> For further discussion of these comments, *see* the Canada AD Initiation Checklist, at Attachment II.

Our review of the data provided in the Petition, Petition Supplement, letters from the GOC and Petitioner, and other information readily available to the Department indicates that Petitioner has established industry support.<sup>23</sup> First, the Petition established support from domestic producers and workers accounting for more than 50 percent of the total production of

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<sup>16</sup> *See* Petition, Volume I, at 6-7 and Exhibit 10; *see also* Petition Supplement, at 8-9 and Exhibit 10.

<sup>17</sup> *See id.* at 6-9 and Exhibits 10 and 14.

<sup>18</sup> *Id.*, at 4-6 and Exhibits 2 and 56.

<sup>19</sup> *See id.* at 4-10 and Exhibit 10; *see also* Petition Supplement, at 8-9 and Exhibit 10.

<sup>20</sup> *See* Canada AD Initiation Checklist, at Attachment II.

<sup>21</sup> *See* Consultation Document Memorandum, at Attachment 1; *see also* Consultation Document Memorandum, at Attachment 3.

<sup>22</sup> *See* Consultation Document Memorandum, at Attachment 1.

<sup>23</sup> *See* Canada AD Initiation Checklist, at Attachment II.



the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>24</sup> Second, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers and workers who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>25</sup> Finally, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers and workers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>26</sup> Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(F) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.<sup>27</sup>

#### Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>28</sup>

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<sup>24</sup> See section 732(c)(4)(D) of the Act; *see also* Canada AD Initiation Checklist, at Attachment II.

<sup>25</sup> See Canada AD Initiation Checklist, at Attachment II.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See Petition, Volume I, at 34 and Exhibit 27.

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; mill closures and layoffs; and adverse impact on the domestic industry's key trade and financial indicators, including financial performance, production, and capacity utilization.<sup>29</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>30</sup>

#### Allegations of Sales at Less-Than-Fair Value

The following is a description of the allegations of sales at less-than-fair value upon which the Department based its decision to initiate an investigation of imports of softwood lumber from Canada. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the initiation checklist, issued concurrently with this notice.<sup>31</sup>

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<sup>29</sup> *Id.*, at 28-30, 34-67 and Exhibits 2, 3, 19, 24, 26-27, 29, 32, 34, 36-53, and 59-60; *see also* Petition Supplement, at 9 and Exhibit 59.

<sup>30</sup> *See* Canada AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Softwood Lumber Products from Canada (Attachment III).

<sup>31</sup> *See generally* Canada AD Initiation Checklist.

### Export Price

Petitioner based U.S. price on five quoted sales offers to customers in the United States for Spruce Pine Fir (SPF) softwood lumber and kiln-dried Douglas Fir (DF) softwood lumber produced in, and exported from, Canada.<sup>32</sup> Petitioner made deductions from U.S. price for movement expenses consistent with the delivery terms.<sup>33</sup> Petitioner also deducted from U.S. price domestic brokerage and handling expenses and early payment discount expenses.<sup>34</sup>

### NV Based on Home Market Sales

Petitioner provided home market price information based on a price quote for SPF lumber produced in, and offered for sale in, Canada.<sup>35</sup> Petitioner stated that the home market price quote was for SPF lumber identical to the SPF lumber in U.S. Offers 1 and 2.<sup>36</sup> Petitioner made deductions from the home market price for inland freight charges and payment discounts.<sup>37</sup>

### NV Based on Constructed Value

For U.S. price Offers 3, 4, and 5, Petitioner was unable to obtain information regarding home market prices and, therefore, calculated NV based on constructed value (CV).<sup>38</sup> Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, financial expenses, packing expenses, and profit.

Petitioner calculated COM based on publicly available sources containing detailed region or

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<sup>32</sup> See Canada AD Initiation Checklist; *see also* Petition, Volume II, at 2-12 and Exhibit 72.

<sup>33</sup> See Canada AD Initiation Checklist; *see also* Petition, Volume II, at 6-12 and Exhibits 72, 73, and 75.

<sup>34</sup> See Canada AD Initiation Checklist; *see also* Petition, Volume II, at 6-7, 10-12 and Exhibits 72, 73, and 76.

<sup>35</sup> See Canada AD Initiation Checklist at 9; *see also* Petition, Volume II, at 12 and Exhibit 77; General Issues Supplement, at Exhibit 77.

<sup>36</sup> See Canada AD Initiation Checklist; *see also* Petition, Volume II, at 12-13.

<sup>37</sup> See Canada AD Initiation Checklist at 9; *see also* Petition, Volume II, at 13-14 and Exhibits 73 and 77; General Issues Supplement, at Exhibit 77.

<sup>38</sup> See Canada AD Initiation Checklist at 10-13; *see also* Petition, Volume II, at 15-16. In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for all of the investigations, the Department will request information necessary to calculate the cost of production (COP) and CV to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. The Department will no longer require a COP allegation to conduct this analysis.

province-specific log and sawmill production costs.<sup>39</sup> Specifically, Petitioner relied on the information reported in the Wood Markets' *Cost Benchmark Report* and *Quarterly Update* publications, adjusted for contemporaneity and to reflect more specific product costs where information was publicly available, as well as information published by provincial offices in Canada.<sup>40</sup> To determine the SG&A, and financial expense rates, Petitioner relied on the audited financial statements of a Canadian lumber producer.<sup>41</sup> Petitioner also relied on the audited financial statements of the same producer that was used for calculating the SG&A, and financial expenses to calculate the profit rate.<sup>42</sup>

#### Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of softwood lumber from Canada, are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP to NV in accordance with sections 773(a) and (e) of the Act, the estimated dumping margins for softwood lumber range from 20.12 percent to 53.08 percent.<sup>43</sup>

#### Initiation of Less-than-Fair-Value Investigation

Based upon the examination of the AD Petition on softwood lumber from Canada, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of softwood lumber for Canada are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with

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<sup>39</sup> See Canada AD Initiation Checklist; *see also* Petition, Volume II, at 17-19.

<sup>40</sup> See Petition, Volume II, at 17-34 and Exhibits 69, 78, 82, 85, 87, 94, and 95.

<sup>41</sup> See Canada AD Initiation Checklist at 11.

<sup>42</sup> *Id.*

<sup>43</sup> See Petition Supplement at 10; *see also* Revised Exhibit 73; Canada AD Initiation Checklist at 15.

section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the Act.<sup>44</sup> The TPEA does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission (ITC).<sup>45</sup> The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.<sup>46</sup>

#### Critical Circumstances

Petitioner alleges, based on trade statistics and documented prior knowledge of an impending trade case, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of softwood lumber from Canada.<sup>47</sup>

Section 733(e)(1) of the Act states that if a petitioner alleges critical circumstances, the Department will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under, subparagraph (A)(i), there is a history of dumping and there is material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject

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<sup>44</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

<sup>45</sup> See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

<sup>46</sup> *Id.*, at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>47</sup> See Petition, Volume I, at 67-78.

merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(2) of the Department's regulations provides that, generally, imports must increase by at least 15 percent during the "relatively short period" to be considered "massive" and section 351.206(i) defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed)<sup>48</sup> and ending at least three months later. The regulations also provide, however, that if the Department "finds that importers, or exporters and producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," the Department "may consider a period of not less than three months from that earlier time."<sup>49</sup>

Petitioner alleges that there is a history of dumping and material injury by reason of dumped imports of softwood lumber, and that U.S. importers knew or should have known that softwood lumber was being sold at less-than-fair value and that there was likely to be material injury by reason of such sales.<sup>50</sup> Petitioner notes that, in a previous investigation, the Department made a final affirmative antidumping determination on softwood lumber imports from Canada.<sup>51</sup> Additionally, in the final results of two administrative reviews of the resulting order on softwood lumber, and in the preliminary results of a third review, the Department found that softwood lumber from Canada continued to be sold for less-than-fair value.<sup>52</sup>

Petitioner also asserts that there have been massive imports of softwood lumber over a relatively short period. Petitioner contends that, pursuant to 19 CFR 351.206(i), the Department

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<sup>48</sup> See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

<sup>49</sup> See *id.*

<sup>50</sup> *Id.* at 67-78.

<sup>51</sup> *Id.* at 76.

<sup>52</sup> *Id.*

should evaluate the level of imports during a period prior to the filing of the Petition, because importers and foreign exporters and producers had reason to believe that an antidumping duty petition was likely.<sup>53</sup> In particular, Petitioner provided news articles and industry publications to demonstrate that importers and foreign exporters and producers were aware that the Softwood Lumber Agreement (SLA) expired on October 12, 2015, and that after October 12, 2016, the domestic industry in the United States would once again be permitted to file an AD petition.<sup>54</sup> Accordingly, Petitioner asserts that importers and foreign exporters and producers were aware that they had a one-year period following the expiration of the SLA to ship subject merchandise without being subject to antidumping duties.<sup>55</sup> Therefore, to consider whether imports of softwood lumber were massive over a relatively short period of time, Petitioner contends that the Department should compare import levels during January 2015 through October 2015 (base period) with import levels during November 2015 through August 2016 (comparison period).<sup>56</sup> Based on Petitioner's calculation, the import volume of softwood lumber surged 25.56 percent between the base and comparison period, and the value of imports surged 18.11 percent.<sup>57</sup> Petitioner asserts that because the surge in imports constituted more than a 15 percent change, import volumes of softwood lumber are massive, as defined in the Department's regulations.

Petitioner requests that the Department make a preliminary finding of critical circumstances within 45 days of the filing of the Petition.<sup>58</sup> Section 732(e) of the Act states that when there is a reasonable basis to believe or suspect (1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or (2) the person by whom, or for whose

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<sup>53</sup> *Id.* at 69-70.

<sup>54</sup> *Id.* at 70-72 and Exhibits 39, 64, 65, 67. Petitioner notes that there was a one-year "standstill" period during which domestic industry was not permitted to file an AD petition. *Id.* at 70-72.

<sup>55</sup> *Id.* at 72-73.

<sup>56</sup> *Id.* at 73-74.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 69.

account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less-than-fair value, the Department may request Customs and Border Protection (CBP) to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further. We will monitor imports of softwood lumber from Canada and may request that CBP compile information on an expedited basis regarding entries of subject merchandise.<sup>59</sup> If, at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances determination at the earliest possible date.<sup>60</sup>

#### Respondent Selection

Based on information reasonably available to it, Petitioner identified over 400 companies in Canada as producers/exporters of softwood lumber.<sup>61</sup> Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of companies is large and it cannot individually examine each company based upon the Department's resources, where appropriate, the Department intends to select mandatory respondents based on CBP data for U.S. imports of softwood lumber from Canada during the period of investigation under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the "Scope of the Investigation," in the Appendix. The Department also intends to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO on the record within five business days of publication of this *Federal Register* notice. Interested parties wishing to comment regarding the

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<sup>59</sup> See Section 732(e) of the Act.

<sup>60</sup> See Policy Bulletin 98/4, 63 FR 55364 (October 15, 1998).

<sup>61</sup> See Petition, Volume I, at 28 and Exhibit 61.



CBP data must do so within seven calendar days after the placement of the CBP data on the record of this investigation. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's website at <http://enforcement.trade.gov/apo>.

Comments for this investigation must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. EST, by the dates noted above. We intend to finalize our decision regarding respondent selection within 20 days of publication of this notice.

#### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the GOC via ACCESS. Because of the particularly large number of producers/exporters identified in the Petition,<sup>62</sup> the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

#### ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

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<sup>62</sup> See Petition, Volume I, at Exhibit 61.

### Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of softwood lumber from Canada are materially injuring or threatening material injury to a U.S. industry.<sup>63</sup> A negative ITC determination will result in the investigation being terminated;<sup>64</sup> otherwise, the investigation will proceed according to statutory and regulatory time limits.

### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Specific time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in the investigation.

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<sup>63</sup> See section 733(a) of the Act.

<sup>64</sup> *Id.*

### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under Part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under Part 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>65</sup> Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013,

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<sup>65</sup> See section 782(b) of the Act.

should use the formats for the revised certifications provided at the end of the *Final Rule*.<sup>66</sup> The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Gary Taverman  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

Dated: December 15, 2016.

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<sup>66</sup> See *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

## **Appendix**

### **Scope of the Investigation**

The merchandise covered by this investigation is softwood lumber, siding, flooring and certain other coniferous wood (“softwood lumber products”). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (“HTSUS”). This chapter of the HTSUS covers “Wood and articles of wood.” Softwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44:

4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.90.25.00.

Subject merchandise as described above may also be classified as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts under the following ten-digit HTSUS subheadings in Chapter 44:

4415.20.40.00; 4415.20.80.00; 4418.90.46.05; 4418.90.46.20; 4418.90.46.40; 4418.90.46.95; 4421.90.70.40; 4421.90.94.00; and 4421.90.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

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